IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10530 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEOLINE ENTERPRISES PVT LTD

Versus

GIDC

Appearance:

1. Special Civil Application No. 10530 of 1999

MR MANISH R BHATT for Petitioners

MR MAKWAN for M/S TRIVEDI & GUPTA for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 24/10/2001

ORAL JUDGEMENT

Heard learned Counsel appearing for the parties, at length.

2. Rule. Mr.Makwan waives the service of Rule on behalf of the respondents.

3. The petitione in this petition under Article 226 of the Constitution of India has challenged the order dated 29th Sept.1999 passed by the Regional Manager-I, Gujarat Industrial Development Corporation ("GIDC" for short), Vapi, demanding Rs.13,63,980/- at 66% being the amount of delayed utilisation penalty from the petitioner.

2. According to the petitioners, they are not liable to penalty of any nature whatsoever for the alleged delay in utilising the plot nos.127 and 128 at Vapi Industrial Area.

3. In order to understand the grievance of the petitioners, it is necessary to give certain facts:

On 19.11.1971, the petitioner Company was incorporated as "Desai Dehydration Enterprises Private Limited with the main objects of setting up plant for dehydration of Green Grass for cattle feeding, and to carry on business of automobile Bus and Coach Body building. A Lease Deed was entered into between the Company and GIDC on 11.7.1973 by which the GIDC allotted on lease for a term of 99 years, Plots nos.127 and 128 at Vapi Industrial Area admeasuring 44555 sq.mtrs. i.e. 40000 sq.yds. to the Company for the purpose of dehydration and Bus Coach Building factory. It appears that the petitioners applied for a loan from Gujarat State Financial Corporation ("GSFC" for short) and the GSFC sanctioned the loan on 25th June 1973 of Rs.25,00,000/-, i.e. Rs.18,00,000/- for machinery; Rs.6,00,000/- for building and Rs.1,00,000/- for land. On 15th October 1973, GSFC sanctioned the first instalment of loan of Rs.4,84,000/- for machinery and Rs.1,00,000/for land, from which Rs.25,000/- was deducted as service charges of GSFC. On 29.10.1973, the petitioners paid an amount of Rs.4,79,068/- for machinery, Rs.79,932/- for GIDC land, out of the first instalment of loan released by GSFC. An agreement was executed with Arvind Engg. Industries & B.J.Builders in the month of February 1974 for completion of the factory shed. Between July 1976 and July 1977, the petitioner Company transported imported machineries from Bombay to Vapi. It appears that a dispute between the petitioners and the GSFC arose with regard to payment of the instalments and interest which resulted into litigations. On 26th July 1976, GSFC filed Company Petition No.48 of 1976 for winding up of the petitioner Company for

non-payment of the instalments. This Court by order dated 30th March 1977 rejected the said Company Petition. According to the petitioners, while fighting the litigation, the petitioners continued the construction work of the factory and could complete the same in February 1978. In November 1979, the Assistant Commissioner of Industries, sanctioned State Cash Subsidy in favour of the petitioners after scrutinising the Company's application and inspection of extent of investment done by the Company including the construction work.

Reverting back to the litigation, GSFC, on 13.1.1980 filed Application No.11 of 1990 under Sec.21 of the State Financial Corporation Act, 1951 against the petitioners in the District Court, at Valsad at Navsari. Upon the interim order passed by the Civil Court, Navsari, on 12.4.1980, the inventory of factory Plant and machinery was carried out by the Commissioner. Since the amount of loan was not released, Regular Civil Suit No.492 of 1981 was filed in City Civil Court, at Ahmedabad on 3.3.1981 against GSFC for specific performance and damage. It appears that the City Civil Court, at Ahmedabad, on 30.11.1988, dismissed the petitioners' suit for specific performance. However, the Application of the GSFC being Application No.11 of 162 of 1992 (Original Application No.11 of 1980) was allowed by the City Civil Court, at Ahmedabad. Against the order of the Civil Court, Ahmedabad, on 27.3.1989, First Appeal No.346 of 1989 was filed by the Company in this Court under Sec.32(9) of the State Financial Corporation Act and First Appeal No.383 of 1989 was also filed under Sec.96 of the Code of Civil Procedure. This Court dismissed both the above appeals on 13.7.1989. It appears that the Company filed SLP in the Supreme Court against the order of this Court and on 7.1.1992, the Supreme Court while disposing of the SLP observed that bearing in mind the special facts and circumstances of the case, particularly because after withdrawing a part of the loan amount, the petitioners were not able to float the industry which they had envisaged to do. Therefore, it was thought it fit to grant some concession to the petitioners considering the facts and circumstances of the case and accordingly the Supreme Court did not interfere with the impugned order, however, it was directed that if the petitioners pay an additional amount of Rs.7 lacs towards the interest due on or before 15th March 1992, the impugned order will be taken as fully satisfied and the property which is charged for the amount due will be released therefrom.

There is no dispute to the fact that the petitioners cleared the dues of the GSFC in compliance of the order. It appears that the petitioner applied for change of the name of the industry to the Registrar of Companies. Accordingly on 11.2.1991 fresh certificate of incorporation consequent of change of name has been issued by the Registrar of Companies, Gujarat, changing the name of the Company from "Desai Dehydration Enterprises Private Limited" to "Neoplan Enterprises Private Limited." On 3.9.1993, the petitioners requested the respondent Corporation to make entries regarding the change of name in the records. On 22.2.1994, the respondent Corporation issued provisional transfer order and demanded payment of Rs.8,26,067/- as penalty for delay in utilisation. Eight months thereafter, i.e. on 20th Dec.1994, the respondent Corporation increased the said amount and demanded Rs.16,83,905/- as penalty and on 17.4.1995, again the amount was increased to Rs.20,01,623/- and the same was demanded for delay in utilisation of the plots. The petitioners challenged the said orders by filing Special Civil Application No.3246 of 1995 in this Court and this Court by order dated 24.11.1995, directed the respondents to make necessary alterations in the record of the Corporation so far as the name of the petitioner Company is concerned. On 29th Sept.1999, the respondent made a fresh demand of Rs.13,63,980/- being penalty for delay in utilisation of the plots and the said order is challenged in this petition.

4. Learned Counsel appearing for the petitioners invited my attention to the averments made in the petition as well as the reply filed by the respondents in the matter. He has also invited my attention to the separate synopsis filed in the matter with all necessary documents. Learned Counsel has submitted that the petitioner has entered into a lease deed with the respondent Corporation and has paid the entire consideration and has thus become lessee with all attendant rights. It was contended that in absence of any covenant with regard to the levy of non-utilisation penalty or delayed utilisation penalty, the respondent Corporation has no power to levy any new penalty. In the submission of the learned Counsel, the penalty sought to be levied is on the basis of some internal instructions which are not binding to the petitioners. On merits, it was submitted that the petitioners have taken necessary steps for starting the business. After availing the loan, there was difficulty in starting production in view of the proceedings taken out by GSFC and labour unrest. In fact, the production commenced on 25.9.1982 and the

respondents can levy non-utilisation penalty only upto February 1978, i.e. when the factory sheds were completed. Learned Counsel further submitted that non-utilisation penalty can only be a percentage of the purchase price and not the market rate of the plot, when the penalty is sought to be levied. Finally, it was submitted that the alleged non-utilisation penalty has been demanded for the first time in February 1994, when an application was made to carry out change in the name of the Company and especially when no notice of whatsoever nature with regard to any penalty was issued from 1973-74. In the submission of the learned Counsel for the petitioners, they produced contemporaneous evidence in the form of Court Commissioner's inventory, Assistant Commissioner of Industries, GIDC Industrial Estate, Vapi's order of 1979 and that it was difficult to procure the old records and despite this the petitioners produced the contemporaneous evidence on record.

5. On the other hand, learned Counsel appearing for the respondent Corporation submitted that in absence of any violation of the fundamental rights of the petitioners, this Court may not exercise the powers under Article 226 of the Constitution of India. Learned Counsel further submitted that as the present petition involves disputed questions of fact, the petitioners may be relegated to the Civil Court. On merits of the case, it was contended that the in plots which were given on lease, the major portion was to be utilised for dehydration plant and as the same has not been done, the Corporation is entitled to demand penalty for delay in utilisation of the plots.

6. After having heard learned Counsel appearing for the parties, considering the facts and circumstances of the case, I am of the opinion that this Court would like to exercise its inherent powers. The facts and circumstances alleged against the petitioners are not required to be given much weightage. It is clear that lease is executed between the parties for two different purposes, namely, setting up of a plant for dehydration of Green Grass for cattle feed and to carry on business of automobile, Bus and Coach Body building, at the instance of the petitioners. My attention was invited to the documents produced on record. One of the Bills for water charges dated 20th Sept.1975 issued by the respondent Corporation to the petitioner goes to show that the petitioners utilised the plots initially for dehydration plant. Even though the petitioners were involved in the litigation during 1975-76 with GSFC, simultaneously they carried out construction of shed

including the transportation of the imported machineries from Bombay to Vapi. There is no dispute to the fact that from February 1978, there was some difficulty and the factory could not start production because of litigations with GSFC and it appears that setting up the plant for dehydration of cattle feeds was suspended. However, the business of automobile Bus and Coach body building continued. In other words, the plots were utilised for the purpose for which they were leased out to the petitioner. I have gone through the lease deed produced and there is nothing with regard to the levy of non-utilisation or delayed utilisation duty. Prima facie it appears that the respondent Corporation is not entitled to demand any amount for non-utilisation of the plots from the petitioner. However, one should not forget that the plots are allotted to the enterpreneurs for the purpose of utilising the same and mere construction of the shed is not enough. Therefore, the concerned enterpreneur is required to satisfy the authority that he has not only constructed the shed, but has also started manufacturing activity utilising the plot for the purpose for which it is leased to him. As observed earlier, in February 1978, the factory sheds were completed. However, the documents produced in this case do not show about the commencement of the manufacturing activity upto 1982. It may be stated that on 6th June 2000, the respondent Corporation called upon the petitioners to produce any one evidence showing the commencement of production on the plots in question: in the form of Electricity Bill, Central Excise Registration Bills and challan of Excise duty, or Certificate of Factory Inspector. The petitioners, in compliance with the said demand, produced five receipts of Electricity Bill receipts issued by the Gujarat Electricity Board starting from 17.7.1982 upto 22nd February 1983. Not only that, they have also produced the Sales Tax Registration Certificate and the Sales Tax Returns from 12.5.1982 to 31.3.1983, Sales Tax Assessment order passed for the period from 12.5.1982 to 31.12.1982, a sample of Sale Bill dated 30.9.1982 raised on customer M/s.Automobile Products of India (API) and the Goods Receipt Note of M/s.API showing the materials delivered to them and received by them. According to the petitioners, they have produced the documents of the earlier periods. In the letter dated 6th Sept.2000, the petitioners have pointed out that since the records are very old, they could not find Factory Inspector's records, and as the Excise was not applicable, there are no records. In view of the documents produced by the petitioners before the respondent no.2, it is clear that the petitioners, even though constructed the shed way

back in February 1978, commenced the production from 1982 onwards only. I, therefore, hold that the respondents are at the most entitled to recover the amount as penalty for the period upto February 1982 only from which date onwards the petitioners' record show as to the utilisation of the plots in question.

7. The aforesaid finding is based relying on the documents which are not in dispute and therefore, I have no reasons to relegate the petitioners to the Civil Court. One should not loss sight of the fact that the petitioners, even though they were allotted the plots in the year 1973 and the litigation was going on, a practical view has to be taken. In my opinion, the petitioners are also entitled to to get the benefits of the litigation and therefore also, the respondents are not entitled to demand the huge amount claimed by them, i.e. Rs.13,63,980/-. Thus, considering these facts, I am of the opinion that the petition is required to be allowed and it is hereby allowed. The impugned order dated 29th September 1999 passed by the respondents demanding Rs.13,63,980/- being the amount of penalty for delayed or non-utilisation of the plots bearing Nos.127 and 128, Vapi Industrial Area, National Highway, Vapi, is hereby quashed and set aside. The respondents are directed to calculate the amount as penalty for delay or non-utilisation of the Plots in question upto February 1982 only and to inform the petitioners accordingly and the petitioners shall pay the said amount within two weeks from the date of receipt of the notice. Rule is made absolute accordingly with no order as to costs.

(K.R. Vyas, J.)

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